

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DANA-FARBER CANCER INSTITUTE,  
INC.,

Plaintiff,

v.

GATEKEEPER PHARMACEUTICALS, INC.,  
Defendant.

Civil Action No. 1:10-CV-11613

GATEKEEPER PHARMACEUTICALS, INC.,  
a Delaware corporation,

Counterclaimant and Cross-  
Claimant,

v.

DANA- FARBER CANCER INSTITUTE,  
INC., a Massachusetts corporation,

Counter-Defendant,

- and -

NOVARTIS PHARMA, A.G., a Swiss  
corporation; NOVARTIS INTERNATIONAL  
PHARMACEUTICAL, LTD., a Bermuda  
corporation; and NOVARTIS INSTITUTES  
FOR BIOMEDICAL RESEARCH, INC., a  
Delaware corporation,

Third Party Defendants.

**DANA-FARBER CANCER INSTITUTE, INC.’S  
EX PARTE MOTION TO IMPOUND AND FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Local Rule 7.2, plaintiff and counter-defendant Dana-Farber Cancer Institute, Inc. (“DFCI”) respectfully moves to impound its *Ex Parte* Motion for Review *In Camera* (and

Exhibit A thereto) (the “In Camera Review Motion”) until further order of the Court, and requests leave to file the In Camera Review Motion under seal.

In support of this motion, DFCI states as follows:

1. DFCI seeks to impound the In Camera Review Motion pending the Court’s ruling on that motion.

2. Exhibit A to the In Camera Review Motion is an e-mail string dated June 15, 2010, among the following DFCI employees: Dr. Pasi Janne (a DFCI scientist and former director of Gatekeeper), Dr. Kwok Wong (a DFCI scientist and former director of Gatekeeper), Dr. Barrett Rollins (DFCI’s Chief Scientific Officer), and Hillary Mankin-Kufe (an associate general counsel at DFCI). The matters addressed in this e-mail string relate directly to the matters briefed in connection with Gatekeeper’s recent motion to compel production of documents from Mintz Levin, DFCI’s outside counsel in this litigation (Docket # 74, #81 and #92).

3. Gatekeeper has propounded extensive requests for production of documents from DFCI in this case. As of today, DFCI has produced almost 40,000 pages of responsive documents. To ensure that the parties have prompt access to documents, DFCI has been making rolling productions, while continuing its ongoing review and production of additional responsive documents as promptly as practicable. As part of this ongoing review (and subsequent to the briefing reflected at Docket # 74, #81 and #92) DFCI recently discovered the e-mail string attached as Exhibit A to the In Camera Review Motion.

4. Because Exhibit A is directly relevant to the allegations made by Gatekeeper challenging the propriety of DFCI’s assertion of the attorney client privilege with respect to Mintz Levin’s representation of DFCI, DFCI has prepared a short supplemental submission,

addressing and attaching the e-mail string that is attached as Exhibit A to the In Camera Review Motion.

5. Although this e-mail string reflects correspondence between DFCI employees and DFCI's associate general counsel, DFCI believes that the e-mail string does not constitute a privileged communication. Given the positions that Gatekeeper has taken to date in this case, however, DFCI is approaching its supplemental submission with an abundance of caution. Thus, before filing its short supplemental submission, DFCI intends to file the In Camera Review Motion seeking a ruling from this Court as to whether Exhibit A to the In Camera Motion is privileged. If it is not privileged (as DFCI believes), DFCI could then make a public filing of DFCI's supplemental submission on the motion to compel without the danger that DFCI later could be alleged to have effectuated any waiver of DFCI's attorney-client privilege protections.

For the foregoing reasons, DFCI respectfully requests that the Court grant leave to file the *Ex Parte* Motion for Review *In Camera* under seal. Pursuant to Local Rule 7.2(a), DFCI respectfully requests that the impounded documents be returned to DFCI's counsel in the event the order of impoundment is lifted.

Respectfully submitted,

**DANA-FARBER CANCER INSTITUTE, INC.**

By its attorneys,

/s/ Meredith M. Leary

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Dated:

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was filed through the ECF system and will be sent electronically to the registered participants this 22<sup>nd</sup> day of July, 2011.

/s/ Meredith M. Leary

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